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Before the

**Federal Communications Commission**

Washington, DC 20554

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NOV 18 2005

In the matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations  
(Sells, Arizona)

)  
)  
)  
)  
)

MB Docket No. 02-376  
RM-10617

Federal Communications Commission  
Office of Secretary

To: Office of Secretary  
Attn: Chief, Audio Division  
Media Bureau

**Motion for Leave to File Second Supplement to Opposition**

Journal Broadcast Corporation ("Journal"), by counsel, hereby moves for leave to file a Second Supplement to its Opposition<sup>1</sup> to the Petition for Reconsideration ("Petition") filed by Lakeshore Media, LLC ("Lakeshore") in response to Report and Order, DA 04-3514 (Media Bureau, rel. November 22, 2004). Journal's Second Supplement to Opposition<sup>2</sup> is intended to bring a substantive change in the facts to the Commission's attention. In support thereof, Journal states the following:

In its Petition (paragraph 17), Lakeshore argued that the substitution of Channel 285C3 for Channel 285C2 at Willcox, Arizona, and the reallocation of Channel 285C3 from Willcox to Davis-Monthan Air Force Base, Arizona (and the modification of Station KWCX-FM's license accordingly) would not create a new "white" area because, among other reasons, the area in question would be served by the proposal of Cochise Broadcasting LLC ("Cochise"), the high bidder in Auction #37 for a new FM station on Channel 279 at Lordsburg, New Mexico (BNPH-20041201CAN).

<sup>1</sup> Journal filed its Opposition on March 23, 2005 and its initial Supplement on July 15, 2005.

<sup>2</sup> Journal is concurrently submitting its Second Supplement to Opposition.

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Since the last pleadings in this matter, the FCC granted Cochise's FCC Form 301 application for FM Channel 279C1 at Lordsburg (BNPH-20050609ABD) (the "Granted Cochise Permit"). This grant occurred on September 14, 2005. The Granted Cochise Permit is materially significant because it proves Journal's contentions throughout this proceeding: Cochise's new station will not undo the white area that would be created by Lakeshore's proposal. Thus, the issues discussed in the Second Supplement go to the heart of the matter now the subject of reconsideration by the Commission.

The approval of the Granted Cochise Permit is a significant new event with material implications for the Commission's reconsideration of this matter. This fact – now a reality rather than a theoretical argument as it was previously in this proceeding – prompts Journal to seek leave to submit a Second Supplement to its Opposition. This leave is sought to ensure this crucial fact, and Journal's views thereon, are before the Commission as it reconsiders its initial decision in this matter.

For the foregoing reasons, Journal submits that the public interest would be served by granting Journal leave to file a Second Supplement to its Opposition (submitted concurrently with a copy attached as Exhibit 1, hereto).

Respectfully submitted



Joseph M. Di Scipio  
Michael W. Richards  
*Counsel to Journal Broadcast Corporation*

Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington Virginia, 22209  
703-812-0400

**CERTIFICATE OF SERVICE**

I, Carla Whitlock, a Secretary at Fletcher, Heald & Hildreth PLC hereby certify that I caused true and correct copies of the foregoing Motion for Leave to File Second Supplement to Opposition to be transmitted to the following parties on this 18<sup>th</sup> day of November, 2005, via first class mail, postage prepaid, or by hand where indicated, at the addresses stated below:

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Carla M. Whitlock

\* Via Hand Delivery

## **EXHIBIT 1**

Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the matter of	)	
	)	
Amendment of Section 73.202(b)	)	
Table of Allotments,	)	MB Docket No. 02-376
FM Broadcast Stations	)	RM-10617
(Sells, Arizona)	)	

To: Office of Secretary  
Attn: Chief, Audio Division  
Media Bureau

**Second Supplement to Opposition**

Journal Broadcast Corporation ("Journal"), by counsel, hereby submits this Second Supplement to the Opposition<sup>1</sup> which it filed with regard to Lakeshore Media, LLC's ("Lakeshore") Petition for Reconsideration ("Petition") of Report and Order, DA 04-3514 (Media Bureau, rel. November 22, 2004) ("Report and Order").<sup>2</sup> In further support of its position that the decision in the Report and Order was correct and should be affirmed, Journal states the following:

The Media Bureau concluded that the adoption of Lakeshore's counterproposal<sup>3</sup> would create a substantial "white" area (2,142 square kilometers, containing a population of 2,846).<sup>4</sup>

<sup>1</sup> Journal's Opposition to Petition for Reconsideration ("Opposition") was filed on March 23, 2005 and its initial Supplement was filed on July 15, 2005 ("Initial Supplement").

<sup>2</sup> Journal is concurrently filing a Motion for Leave to File a Second Supplement to Opposition.

<sup>3</sup> Lakeshore's counterproposal would substitute Channel 285C3 for Channel 285C2 at Willcox, Arizona, reallocate Channel 285C3 from Willcox to Davis-Monahan Air Force Base, Arizona, and modify the license of Station KWEX-FM (currently operating on Channel 285C2 at Willcox) accordingly.

Report and Order, Paragraph 8. In its Petition, Lakeshore contended that its counterproposal would not create any white area because, among other reasons, the area in question would receive service from the facility proposed in the application of Cochise Broadcasting LLC ("Cochise"), the successful bidder in FM Auction #37 for a new station on Channel 279 at Lordsburg, New Mexico (BNPH-20041201CAN). Petition, paragraph 17.<sup>5</sup>

In its Initial Supplement, Journal demonstrated that the Cochise application, as filed, would not eliminate the white area that led the Media Bureau to decline Lakeshore's proposal. Initial Supplement at 2-3. This Second Supplement is filed to draw the Commission's attention to the fact that Journal's projections have now proven correct. A construction permit was granted based on that application on September 14, 2005 (the "Approved Cochise Permit"). The Approved Cochise Permit contains no changes to the technical parameters discussed in the Initial Supplement. Thus, the reality here is that the Approved Cochise Permit will create the exact white area described in the Initial Supplement, should Lakeshore prevail.

The final analysis is simple: should the Commission reverse its prior decision on Lakeshore's counter proposal, and approve it, the Commission will – just as Journal projected – create a new white area where service exists today.

As noted in the Initial Supplement, the Granted Cochise Permit Application is entirely different from the proposal in the initial application relied upon by Lakeshore. Cochise's initial

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<sup>4</sup> The Media Bureau also concluded that Lakeshore's counterproposal would create a significant area (1,068 square kilometers, containing a population of 1,022) which would have only one reception service. Id.

<sup>5</sup> Similarly, Lakeshore argued that no white area would be created because of the service which was proposed in the amended application of Station KCDQ(FM), Tombstone, Arizona (BPH-20010525AAX). See Petition, paragraph 16. In addition, Lakeshore argued that no white area would be created because of the service which would result from the allotment of Channels 245C2 and 283C2 to Willcox, Arizona, which Lakeshore proposed in its counterproposal. The Media Bureau expressly rejected this argument. See, Report and Order, Paragraph 7.

application proposed operation on Channel 279C from a tower located approximately 84 kilometers west of Lordsburg. The Granted Cochise Permit will lead to operation on Channel 279C1 (with minimum facilities) from a tower located approximately 3 kilometers west of Lordsburg—i.e., approximately 80 kilometers from the initially proposed site. See Further Supplemental Engineering Statement of Roy P. Stype (executed Nov. 18, 2005), attached hereto as Exhibit A (“Engineering Statement”). As Mr. Stype explains, the parameters of the current Cochise proposal are such that it would not provide 60 dBu service to any of the white area which would be created by the implementation of Lakeshore’s counterproposal to modify the facilities of Station KWCX-FM. Id., page 2.

Up to now, this matter was argued on hypothetical outcomes. But hypotheses have now been supplanted by raw facts. The Granted Cochise Permit irrefutably demonstrates that Journal was correct when it warned that a grant of Lakeshore’s counter proposal would create a white area. As noted in the attached Engineering Statement, “there can be no reliance on the service authorized by the Cochise construction permit because it would not provide replacement service to any part of the “white area” which would be created by the proposed KWCX-FM reallocation.” Engineering Statement at 2.

As it is contrary to the public interest to create a new white area of this magnitude, the Commission should not overturn its initial decision in this matter. Therefore, the public interest demands that the decision below be upheld.

For the foregoing reasons, and for the reasons set forth in the Report and Order, Journal submits that the Commission should deny Lakeshore's Petition for Reconsideration.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Michael W. Richards", is written over a horizontal line.

Joseph M. Di Scipio  
Michael W. Richards  
*Counsel to Journal Broadcast Corporation*

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1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington Virginia, 22209  
703-812-0400

November 18, 2005



# **EXHIBIT A**

**FURTHER SUPPLEMENTAL ENGINEERING  
STATEMENT IN SUPPORT OF OPPOSITION TO  
PETITION FOR RECONSIDERATION**

**MM DOCKET 02-376**

**Journal Broadcast Corporation  
Tucson, AZ :**

**November 18, 2005**

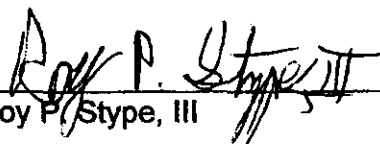
**CARL E. SMITH CONSULTING ENGINEERS**

ENGINEERING AFFIDAVIT

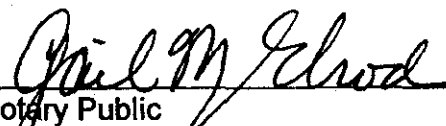
State of Ohio                    )  
                                      ) ss:  
County of Summit            )

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by the Journal Broadcast Corporation to prepare the attached "Further Supplemental Engineering Statement In Support of Opposition To Petition For Reconsideration - MM Docket 02-376."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Roy P. Stype, III

Subscribed and sworn to before me on **November 18, 2005**.

  
\_\_\_\_\_  
Notary Public

/SEAL/

GAIL M. ELROD, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires Sept. 24, 2007

## ENGINEERING STATEMENT

This engineering statement is prepared on behalf of the Journal Broadcast Corporation ("Journal"), licensee of several radio stations in the Tucson, Arizona area. It supports a further supplement to Journal's March 23, 2005 *Opposition to the Petition for Reconsideration* ("the KWCX-FM petition") filed in MB Docket 02-376 by the licensee of Radio Station KWCX-FM, Willcox, Arizona. KWCX-FM presently operates on Channel 285C2. It filed a counterproposal in this rulemaking proceeding proposing to substitute Channel 285C3 at Davis-Monthan Air Force Base, Arizona for Channel 285C2 in Willcox, Arizona and modify the license for KWCX-FM to specify operation on Channel 285C3 at Davis-Monthan Air Force Base. The *Report and Order* in this proceeding denied this counterproposal because the proposed reallocation would create new "white area" and the two new "backfill" allocations proposed in the KWCX-FM counterproposal were deemed not to be an acceptable replacement for the existing service from KWCX-FM, which provides the only existing full time aural service to the new "white area" which would have been created by the proposed reallocation.

One of the "changed circumstances" cited in the KWCX-FM petition was the filing of a "long form" construction permit application<sup>1</sup> (BNPH-20041201CAN<sup>2</sup>) by Cochise Broadcasting, LLC, the winning bidder in Auction 37 for Channel 279C3 in Lordsburg, New Mexico, which the KWCX-FM petition claimed would provide service to the new "white area" which would be created by the proposed KWCX-FM reallocation. On June

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<sup>1</sup>As originally filed, the Lordsburg "long form" application proposed a "one step" upgrade to Channel 279C from a site located 83.8 kilometers (52.1 miles) west of Lordsburg.

<sup>2</sup>The file number for this original "long form" application was subsequently changed to BMPH-20041201CAN and it is now being processed as an application to modify the construction permit (BNPH-20050609ABD) recently granted for Channel 279C1 in Lordsburg in response to the filing of the second "long form" application by the winning bidder for this allocation.

9, 2005, Cochise Broadcasting, LLC filed a new "long form" application for Channel 279 in Lordsburg, which was subsequently granted on September 14, 2005. The construction permit granted to cover this second "long form" application specifies operation on Channel 279C1 in Lordsburg with minimal Class C1 facilities (51 kilowatts effective radiated power at 61 meters above average terrain) from a site located 80.7 kilometers east of the originally proposed site (approximately 3 kilometers west of Lordsburg). The facilities authorized by this construction permit will not provide 60 dBu service to any portion of the "white area" which would be created by the proposed KWCX-FM reallocation.<sup>3</sup>

Accordingly, there can be no reliance on the service authorized by the Cochise construction permit for Lordsburg because it would not provide replacement service to any part of the "white area" which would be created by the proposed KWCX-FM reallocation. There can also be no reliance on the proposal in the now pending application to modify this construction permit, because this application has not yet been granted and, as previously noted in this proceeding, contains several flaws which make its ultimate grant questionable, at best.

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<sup>3</sup>Even assuming that the Lordsburg facility would operate with maximum Class C1 facilities from the site authorized by this construction permit, as is done when evaluating the existing aural services to an area when evaluating a proposal to add a new allotment, would only result in the Lordsburg facility being predicted to provide service to a small portion of the "white area" which would be created by the proposed KWCX-FM reallocation. In this case, however, it would appear to be more appropriate to only utilize the facilities authorized by the Lordsburg construction permit (only after they have been constructed and placed in operation) in this analysis, since the "white area" which is being created is losing its only existing aural service, which cannot adequately be replaced by the "theoretical" coverage from an assumed maximized allotment facility or by an authorized, but unconstructed, facility. Similarly, it would not be proper to count the facilities authorized by the recently granted construction permit (BPH-20010525AAX) authorizing KCDQ to operate on Channel 237C0 in Tombstone, Arizona as a replacement service to this "white area", since the facilities authorized for KCDQ by this construction permit have not yet been constructed and, thus, do not constitute an adequate replacement for the existing service which is presently provided to this "white area" by KWCX-FM.

## CERTIFICATE OF SERVICE

I, Carla Whitlock, a Secretary at Fletcher, Heald & Hildreth PLC hereby certify that I caused true and correct copies of the foregoing Second Supplement to Opposition to be transmitted to the following parties on this 18<sup>th</sup> day of November, 2005, via first class mail, postage prepaid, or by hand where indicated, at the addresses stated below:

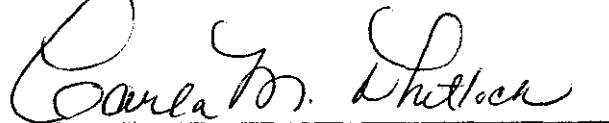
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